

APPENDIX B – STATEMENT OF
MATERIAL FACTS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

| | | |
|-------------------------|---|-------------------------------|
| CITY OF SOUTH BEND, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Cause No. 3:12-cv-475-JVB-CAM |
| |) | |
| HOLDER, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |

STATEMENT OF MATERIALS FACTS

1. Karen DePaepe was the Director of Communications for the South Bend Police Department during the period of time relevant to Plaintiffs' Complaint.

2. As a part of her duties as Director of Communications Karen DePaepe was responsible for maintaining certain equipment contained within the department which included the Dynamic Instrument Reliant Recording System which operated to record and store conversations that occurred on certain phone lines coming into the department.

3. Karen DePaepe became Director of Communications on July 1, 1998.

4. At the time Karen DePaepe became Director of Communications the department regularly recorded a number of phone lines that were used by the department.

5. No written policy existed within the department concerning the recording of incoming phone lines.

6. The custom and habit of the department was that the Chief of Police determined which phone lines would be placed on the recording system and then the Chief would order Karen DePaepe to take the steps necessary to place the specified phone line(s) on the recording system.

7. The placement of a phone line on the recording system required specific technical

knowledge not possessed by Karen DePaepe or anyone else in the department which required Karen DePaepe to employ the assistance of an outside firm.

8. Once a phone line was placed on the recording system, every conversation occurring on that line would be recorded 24 hours a day, 7 days a week, 365 days a year. There was no method that any one person could selectively record a particular conversation.

9. Once a conversation was recorded it was stored on a hard drive contained within the recording system, from time to time the hard drive was designed to automatically download recorded conversations on to a C.D. for long term storage.

10. Thomas Fautz was the Chief of Police for the South Bend Police Department from 2002 to December 28, 2007.

11. Sometime during his tenure as Chief of Police Fautz authorized the adding of a number of phone lines to the recording system. One of these lines is the phone line that is the subject of this lawsuit.

12. Fautz directed Karen DePaepe to take the steps needed to place the subject phone lines on the recording system. The reason given by Fautz to Karen DePaepe that these lines were to be recorded was to document how the department was handling complaints from the citizens. No other reason was given to Karen DePaepe as to the reason for recording these lines.

13. No changes were made to what phone lines were being recorded when Darryl Boykins became Chief of Police in 2007.

14. During 2010 the recording system was exhibiting numerous mechanical failures including several hard drive failures.

15. In furtherance of her duties to maintain the recording system Karen DePaepe had

to determine if any data was lost as a result of the multiple hard drive failures. In order to determine both that the system was repaired and operating properly as well as if any data had been lost Karen DePaepe was required to check each recorded phone line and to listen to random recorded conversations to help determine that the recording system was recording the conversations and storing the data properly.

16. It was during the above described process that Karen DePaepe overheard some of the recorded conversations that are the subject of this lawsuit.

17. Subsequently Karen DePaepe received a directive from the South Bend Attorney, Aladean DeRose to assist a local news station to recover information pursuant to a Freedom of Information Act request filed by that news station.

18. In order to comply with the directive from the City Attorney, Karen DePaepe listened to telephone conversations recorded and stored on the recording system. While she was doing so, Karen DePaepe discovered the other recorded conversations that are the subject of this lawsuit.

19. As a result of the content of the conversations Karen DePaepe reported what she had heard to the Chief of Police, Darryl Boykins. Boykins subsequently directed Karen DePaepe to place the recorded conversations on cassette tapes and provide those cassette tapes to Boykins. DePaepe did as requested.

20. All of the recorded conversations that are the subject of this lawsuit were recorded from a single telephone line which was authorized to be placed on the recording system by former Chief Thomas Fautz.

21. Routinely, over the years, Karen DePaepe was requested by police officers, city attorney's and outside law enforcement agencies to listen to and look for certain recorded

conversations that were recorded by the system for a wide variety of reasons including, criminal investigations, internal affair investigations, citizen complaints regarding police personnel, as well as FOIA requests.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served by first-class, via e-mail, postage prepaid on this 13th day of December, 2013, upon the following:

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